

# **Commission on Health and Safety and Workers' Compensation**

## **MINUTES OF MEETING**

**Wednesday, January 24, 2001**

**Los Angeles, California**

### In Attendance

Chair John Wilson

Commissioners Jill A. Dulich, Leonard McLeod, Gerald O'Hara, Tom Rankin,

Kristen Schwenkmeyer, Robert B. Steinberg, Darrel "Shorty" Thacker

Executive Officer Christine Baker

### **Call to Order / Adoption of Minutes**

Chairperson John Wilson called the meeting to order at 10:00 am and asked for a motion on the December 14, 2000 CHSWC meeting minutes. Commissioner Rankin moved for approval of the minutes, Commissioner O'Hara seconded and the motion passed unanimously.

Commissioner McLeod requested the addition of an item to the agenda – 'A Discussion of the Compromise and Release and Budget Problems Issue' – to be included under 'Other Business'.

### **Benefit Model: An Analysis of Replacement Rate and Benefit Distribution**

Frank Neuhauser, Survey Research Center, UC Berkeley

A 'benefit model', for the use of policy makers in the analysis of workers' compensation wage replacement rates and benefit distribution, has been developed by the University of California. The model, developed to run on a personal computer, will provide estimates of the impact of changing the numerous parameters that determine individual benefits. The model will enable policymakers and the legislature to test the impact of any benefit change or combination of benefit changes on wage replacement rates.

CHSWC Executive Officer Christine Baker suggested that the benefit model be reviewed by an independent technical review team at the Rand Institute. Technical reviews are commonly done in the development of economic or research models to ensure usage of proper methodologies, assumptions, procedures, and documentation. Ms. Baker requested that the Commission allocate between \$75,000 and \$100,000 for technical reviews of the benefit model and future projects as needed.

### *CHSWC Vote*

Commissioner Rankin moved that \$100,000 be allocated so that the benefit model may be reviewed by an independent technical review team and for future technical reviews as needed. Commissioner Dulich seconded and the motion passed unanimously.

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**Hospital Fee Schedule - Update and Preliminary Results of the Study**

Richard P. Gannon, Administrative Director, Division of Workers' Compensation

DWC AD Richard P. Gannon presented an overview of the study and some of the preliminary results derived from his meeting with project researcher Dr. Laura Gardner.

Mr. Gannon reported that the study is being conducted in two phases. The first phase is an analysis of the adequacy of the current Fee Schedule methodology, including comparisons by Diagnostic Related Groups (DRG) to payments for Medicare, Group Health and workers' compensation. DRGs specify global fees for certain procedures and are designated by numbers. The second phase of the study will develop recommendations regarding instituting an outpatient or ambulatory surgery fee schedule. There is currently no fee schedule for that area and the study is indicating that such procedures have been increasing significantly since 1998.

The initial findings of the study indicated that Workers' Compensation charges were higher than Group Health, but that payments were lower than Group Health. When adjustments were made for injury severity, it was found that workers' compensation patients were less severe and the procedures were less resource intensive than for Group Health patients. An exception to those findings was DRG 496, involving complex back surgeries with implantations.

Mr. Gannon reported that DWC will be implementing a proposal which will exclude implantable surgical hardware from DRG payment and subject the hardware to separate payment of actual documented paid cost, plus a 10 percent handling cost to a maximum of \$250. This proposal will have a sunset date of December 31, 2001. The Division will also publish its third proposal for a cost outlier, with a methodology similar to the modified Medicare formula.

Mr. Gannon said that after the draft of the study is released (expected by the next Commission meeting on April 19, 2001), the Division of Workers' Compensation would begin the process of a comprehensive revision of the fee schedule.

**Information for Injured Workers -- Final Report**

Juliann Sum, Esq., MPH, Labor Occupational Health Program, UC Berkeley

Ms. Sum made a presentation of the final report on the educational materials and benefit notices projects conducted by the Labor Occupational Health Program (LOHP) for the Commission. In the educational materials project, seven fact sheets in English and Spanish were completed. The Project Advisory Committee and others in the community recommended that the fact sheets be consolidated into a Comprehensive Guide. In the benefit notices project over the past year, LOHP assisted the Commission in identifying problematic statutes and practical changes in statutes that could improve basic information for all workers and benefit notice information for injured workers.

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Ms. Sum also reported on some of the recommendations that came out from discussion groups with injured workers (in English and Spanish), project advisors and others in workers' compensation community about practical programs to get the information out to the community. Recommendations were made about the notice to workers about their rights and procedures as an injured worker that accompanies the workers' compensation claims form. Most felt that there was a need for a clearer design and content with relation to the notices.

Also, most participants felt that information should be given to injured workers with the same acknowledgment and respect as to employers. There was strong support for a comprehensive guide for injured workers, similar to the state guide for employers on workers' compensation that is very attractive, accessible, and easy to read.

Commissioner Wilson noted that the reference list of publications in the report were from both state and private sources. He recommended that the report and guide specify that the state is including these for reference, but not giving its endorsement.

*CHSWC Vote*

Commissioner Rankin moved to approve the "Information for Injured Workers -- Final Report." Commissioner McLeod seconded and the motion passed unanimously.

**Report: Economic Impact Study of the Permanent Disability Project -- Policy Analysis**

Robert T. Reville, PhD, Research Director, Rand Institute for Civil Justice

Mr. Reville reported that the Economic Impact study is part of the ongoing Commission evaluation of the permanent disability system being conducted by Rand. The Economic Impact study addresses the issue of whether the uncompensated earnings losses of injured workers were driven by economic conditions, and presents other results by severity of injury for low rated and high rated claims.

The study found that although earnings losses declined between 1991 and 1993, the decline seemed to be largely unrelated to the improving economy. However, the larger decline in losses observed for low rated claims did seem to correlate with economic conditions. Mr. Reville reported that the replacement rate for low rated claims continues to be the lowest and there is evidence that the highest rated claims have the highest uncompensated losses. Mr. Reville stated that these results would be in the final report, which will be submitted to the Commission in February 2001.

Commissioners Steinberg and McLeod asked Mr. Reville to prepare a flow chart of the progress of all the RAND studies dealing with permanent disability and return to work issues. Mr. Reville said that this would be available by the next CHSWC meeting in April 2001.

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**Status of the Study on Presumption of Correctness for Treating Physician Reports**

Frank Neuhauser, Survey Research Center, UC Berkeley

Mr. Neuhauser presented preliminary results on the Study on Presumption of Correctness for Treating Physician Reports. Many members of the community felt that the presumption has led to a loss of control of medical treatment and consequently medical treatment has become excessive. Also, there was speculation that temporary disability durations could have increased if the employer has less control over returning a worker back to work.

Mr. Neuhauser reported that the presumption has affected costs for claims 1993 through 1996 that settled by the end of 1998. In summary, some of the preliminary results indicated that medical costs have not responded differently to workers who control the treating physician whether or not those workers were represented by an attorney. However, the presumption seems to have an impact on temporary disability duration. The study found there was a 15-day difference in duration when the worker is represented and has control of the doctor than when the worker is represented and does not have control. Mr. Neuhauser noted that he would continue to refine the results with data from cases that closed in 2000. A draft of the report would be submitted by mid-February.

*Comments/Questions related to the Presumption Study*

Ms. Baker pointed out that it would be helpful to look at the impact of the presumption on medical-legal costs. Commissioner Dulich suggested that actual medical payments after the date of a stipulated award be factored into the stipulation, when looking at settlement differences between compromise and releases (which factor in future medical payments) and stipulations which generally do not include future medical.

Peggy Sugarman from the California Applicants Attorneys Association asked if there is a study proposal out that would outline the databases and assumptions used in the presentation of the study. Mr. Neuhauser responded that the draft report would include these.

*CHSWC Vote*

Commissioner Rankin moved to issue a draft report on the Presumption Study before the April 19, 2001 CHSWC meeting and circulate it to the community for comment. Commissioner Dulich seconded and the motion passed unanimously.

**Other Business / Public Comment**

Commissioner McLeod expressed concern that the Department of Corrections has issued a directive to stop all workers' compromise and release settlements until the next fiscal year due to budgetary reasons. It has also come to the Commissioner's attention that other state agencies are invoking similar policies. Commissioner McLeod suggested that Christine Baker meet with Mr. Steven Smith, Director of Department of Industrial Relations and Richard Gannon,

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Administrative Director of the Division of Workers' Compensation to come up with ideas as to how to prohibit such state policies. Also, as a long term solution he suggested that rules and regulations be drafted to make such conduct criminal. Chairman Wilson asked Ms. Baker to make a report at the next meeting.


Christine Baker noted that there has been a large response and interest in the upcoming 'California Forum *for* Workplace Health and Safety'. Ms. Baker thanked the Commission staff for their efforts to make the Forum a success and pointed out that Janice Yapdiangco has been exceptional in this regard.

**Adjournment**


Commissioner Dulich moved to adjourn the Commission meeting. Commissioner McLeod seconded and the meeting was adjourned at 11:55am.

Approved:

Respectfully submitted,

 4/19/2001  
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John C. Wilson, Chair

Date

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Christine Baker, Executive Officer